CITY COUNCIL ATLANTA, GEORGIA

SUBSTITUTE AN ORDINANCE:

01-0-0588 Z-01-25

BY: ZONING COMMITTEE

AN ORDINANCE TO AMEND ORDINANCE Z-96-70, ADOPTED BY THE CITY COUNCIL ON AUGUST 4, 1997 AND APPROVED BY THE MAYOR ON AUGUST 5, 1997 APPROVING A REVISED SITE PLAN FOR PROPERTY LOCATED AT THE REAR OF 3500 PEACHTREE ROAD, NE FOR THE PURPOSE OF APPROVING A REVISED SITE PLAN.

OWNER:

100 PARK AVENUE PARTNERS, LP

APPLICANT:

LARRY M. DINGLE, ESQ.

NPU-B:

COUNCIL DISTRICT 7

WHEREAS, Ordinance 99-O-1581 (Z-96-70) was previously considered by the City Council and the request for approval of the revised site plan was adversed by Role Call vote on December 6, 1999; and

WHEREAS, pursuant to the attached order of the Superior Court of Fulton County, dated March 7, 2001, a copy of which is hereby attached as Exhibit A, remanding the case for consideration of modifications and/or conditions or development of another site plan that allows for a use consistent with the Court's order;

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS:

SECTION 1: That the previously approved site plan governing the development of the property at the Rear of 3500 Peachtree Road, NE more particularly described by the attached legal description identified as Exhibit B is hereby deleted in its entirety and revised site plan entitled "100 Park Avenue Zoning Site Plan" prepared by Burt Hill Kosar Rittleman Associates, dated August 16, 1999 and marked received by the Bureau of Planning on August 17, 1999, as presented in 99-O-1581 (Z-96-70) a copy of which is attached is hereby adopted in lieu thereof. The construction of the structure approved by the adoption of this site plan amendment shall be specifically conditioned on the attached document identified as "Neighbor's Proposed Conditions to Z-01-25, a site plan amendment for the Rear of 3500 Peachtree Road, NE" consisting of two (2) pages and marked received by the Zoning Committee July 10, 2001. Said conditions specifically include the two (2) attached landscaping plans entitled "Phipps Boulevard Frontage Plan" prepared by Hughes, Good, O'Leary and Ryan, dated July 10, 2001 and marked received by the Bureau of Planning July 10, 2001 and "View-A from Phipps Blvd. to Mall Service Road" prepared by Hughes, Good, O'Leary and Ryan, dated July 10, 2001 and marked received by the Bureau of Planning July 10, 2001. To the extent that these conditions conflict with the herein adopted site plan, the written conditions shall prevail."

SECTION 2: That all other previously approved conditions governing the development of the property shall remain in full force and effect. A copy of ordinance 97-O-0146 (Z-96-70/Z-94-19) and 99-O-1581 (Z-96-70) including said conditions is hereby attached for reference and identified as Exhibit C.



SECTION 3: That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

A true copy.

Municipal Clerk, CMC

ADOPTED as amended by the Council
RETURNED WITHOUT SIGNATURE OF THE MAYOR
APPROVED as per City Charter Section 2-403

JUL 16, 2001

JUL 25, 2001



IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

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}	CIVIL ACTION I	I FILE NO.				
}	2000CV17819	1.3	The state of the s			
<pre>} } </pre>			MAR-7,2001			
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ORDER REMANDING CASE

This Court having considered the letter briefs of the parties, it is the considered opinion of this Court that this matter should be remanded to the City of Atlanta or its designated authority for the purpose of determining the applicable site plan or any conditions relating to the property which is the subject matter of this action.

Here, the Plaintiff is asking this Court for an advisory opinion the purpose of which is "to provide the City with guidance as what will be unreasonable or unconstitutional." This is not the function of the Superior Court of Fulton County.

The City has agreed that the site plan as currently configured in relation to the subject property is unconstitutional and the case should be remanded so that the City can either accept the Plaintiff's proposal with modifications and/or conditions or develop another site plan that allows for a constitutional use. Once that has transpired there may be an appeal to this Court for further ruling.

It is therefore ordered that this above-styled action be **REMANDED**.

CIVIL ACTION FILE NO. 2000CV17819

SO ORDERED, this the

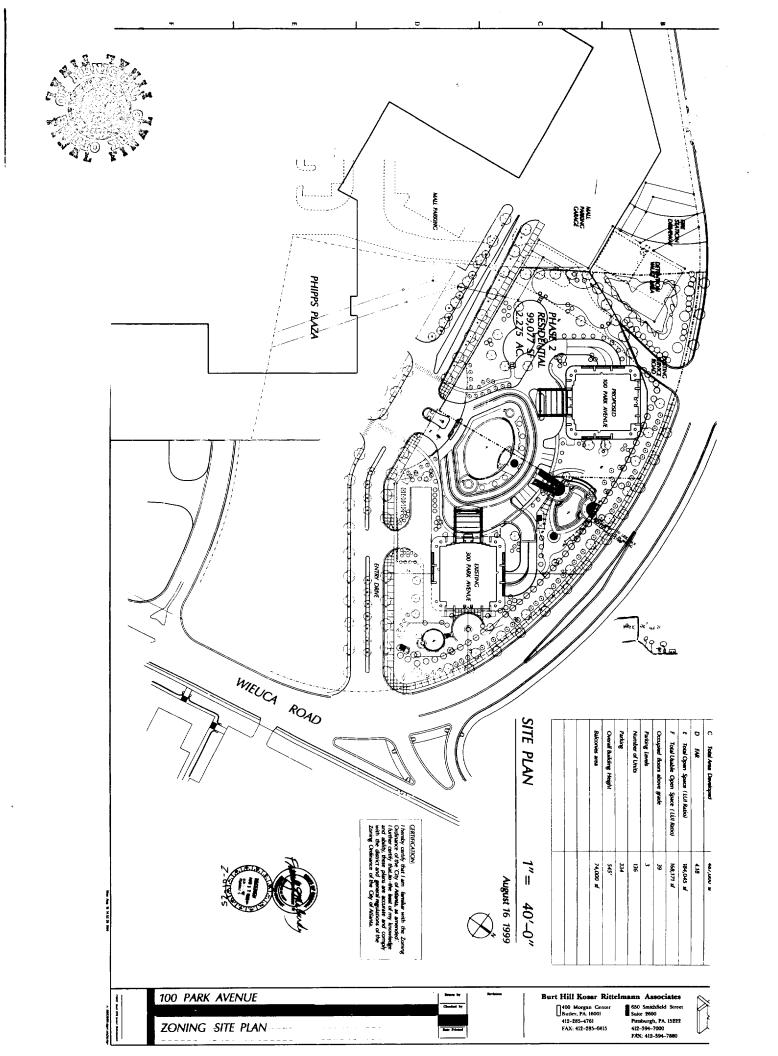
day of March, 2001.

SENIOR JUDGE JOEL J. FRYER

cc:

David D. Blum, Esq.
City of Atlanta, Department of Law
Suite 4100
City Hall Tower
68 Mitchell Street, SW
Atlanta, Georgia 30335-0332

Dick Wilson, Jr., Esq. Wilson, Brock & Irby, LLC Overlook I, Suite 700 2849 Paces Ferry Road Atlanta, Georgia 30339



Neighbors' Proposed Conditions to Z-01-25, a Site Plan Amendment for the Rear of 3500 Peachtree Road, NE

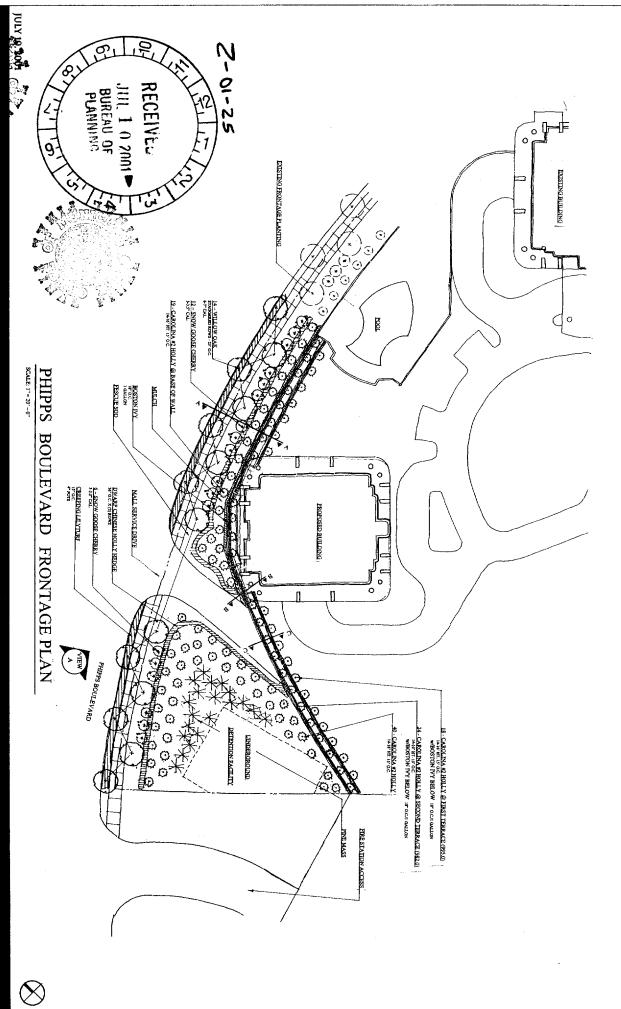
Definitions:

For purposes of this document, the following words will be construed to mean as defined herein:

- a. Neighbors Neighbors shall mean all persons living in residence at the present time in houses, condominiums, duplexes, or apartments which touch with any property line the following streets or roads:
 - 1) Wieuca Road between the intersection of Wieuca Road and Phipps Boulevard and the intersection of Wieuca Road and Old Ivy Road.
 - 2) Conifer Circle
 - 3) Longleaf Drive
 - 4) Park Avenue
 - 5) Phipps Boulevard between the intersection of Phipps Boulevard and Peachtree Road and the intersection of Phipps Boulevard and Lenox Road (also called the Buckhead Loop).
 - 6) Old Ivy Road between the intersections of Old Ivy Road and Wieuca Road and Old Ivy Road and North Stratford Road.
- b. Tower -- Tower shall mean any building and its associated foundations, subfloors, pillars, and support structures of more than five floors used primarily to contain private residences.
- 1) Prior to the issuance of a building permit, the developer shall:
 - **a.** Notify the neighbors of its selection of the general contractor to erect 100 Park Avenue.
 - b. Notify the neighbors of the name and telephone number (24 hours) of the Contractor's Neighbor Coordinator who shall receive and address, complaints about construction debris that leaves the site and violations related to operation of subcontractors who work earlier or later than allowed by law. The Contractor's Neighbor Coordinator shall be required to keep a log, journal or other written record of all complaints filed, the nature and substance of each complaint, the time and date each complaint was resolved and the specific parties contacted to resolve each and all complaints. The Contractor's Neighbor Coordinator's log or journal will be shared with representatives of the North Buckhead Civic Association upon their request with one business day notification.
 - c. Notify the immediate neighbors of the proposed start date and estimated completion date for construction of 100 Park Avenue.

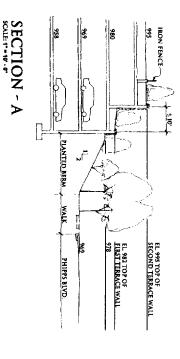
- Meet with neighbors on a quarterly basis as requested to discuss construction related concerns
- 2) The property shall be developed in accordance with two landscape plans prepared by Hughes, Good, O'Leary & Ryan dated July 10, 2001 and marked received by the Bureau of Planning on July 10, 2001 showing a landscaping plan for the Phipps Boulevard frontage and section details of terracing of the wall along Phipps Boulevard.
- 3) The developer will install additional and improved mufflers on the emergency generator on the existing tower. The developer shall install mufflers and/or shielding, structures or devices on the generator(s) for the second tower such that noise emanating from said generator(s) will be not greater than 55 dB as measured on the northern side of Phipps Boulevard immediately across from the developer's property. The generator will not be tested more than once per month, unless required by local, state or federal law. All tests shall be conducted between 10:00 a.m. and 5:00 p.m. on a weekday.
- 4) To improve the ability of the developer to meet code requirements for life safety and comfort ventilation, exhaust, and sanitary plumbing (to reasonably achieve code requirements for sloping the sanitary pipes to establish positive drainage), the height of the new tower (a/k/a 2nd Tower or 100 Park Avenue) will not be greater than 12 feet 11 inches taller than the existing Park Avenue 300 as measured from grade at the front door at the Plaza level of both buildings.
- 5) Should explosives be used to loosen dirt, rock or other material, the applicant is required to notify all neighbors as to the date and time explosives are to be used, outline reasonable and prudent precautions to protect residences against unintended damage to the extent possible, and a contact person and phone number which can be called for further information. This notification must occur 48 hours prior to the detonation of any explosive on the applicant's property.
- 6) The **developer shall notify the** North Buckhead Civic Association in writing of any administrative change(s) to this site plan at least one week prior to the filing of said request.

Amendment Incorporated by tcp 7/25/01



ARK AVENUE ATLANTA, GEORGIA

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RON FENCE

995

EL 995 TOP OF

SECOND TERRACE WALL

PROTTERVACE WALL

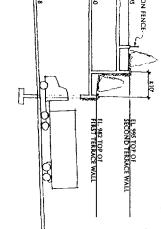
22 (APPROXIMATE

HEIGHT OF

TALLEST WALL).

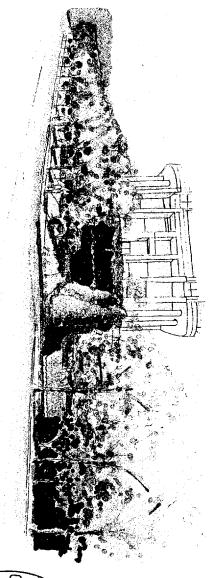
SERVICE DRIVE

958

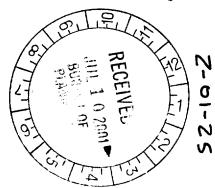


SECTION - C

SECTION - B



VIEW - A
FROM PHIPPS BOULEVARD TO MALL SERVICE ROAD
SCALENTS

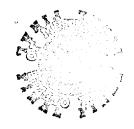


JULY 10, 2001

PARK AVENUE ATLANTA, GEORGIA

HGOR

CITY COUNCIL ATLANTA, GEORGIA



99- 8 -1581

AN ORDINANCE BY: ZONING COMMITTEE

Z-96-70

AN ORDINANCE TO AMEND ORDINANCE Z-96-70,
ADOPTED BY CITY COUNCIL AUGUST 4, 1997 AND
APPROVED BY THE MAYOR AUGUST 5, 1997 APPROVING
A REVISED SITE PLAN FOR PROPERTY LOCATED AT
THE REAR OF 3500 PEACHTREE ROAD, N.E. FOR THE
PURPOSE OF APPROVING A REVISED SITE PLAN.
OWNER: 100 PARK AVENUE PARTNERS, LP
APPLICANT: LARRY M. DINGLE, ESQ.
NPU-B
COUNCIL DISTRICT 7

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, as follows:

SECTION 1. That the previously approved site plans governing the development of property at the Rear of 3500 Peachtree Road, N.E. more particularly described by the attached legal description identified as Exhibit A are hereby deleted in their entirety and a revised site plan entitled "100 Park Avenue, Zoning Site Plan" prepared by Burt Hill Kosar Rittelmann Associates, dated August 16, 1999 and marked received by the Bureau of Planning August 17, 1999 is hereby adopted in lieu thereof.

SECTION 2. That all other previously approved conditions governing the development of this property shall remain in full force and effect. A copy of Ordinance Z-96-70/Z-94-19 (97-0-0146), including said conditions is hereby attached for reference and identified as Exhibit B.

SECTION 3. That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

EXHIBIT C to 01-0-4588 Page of 8

DESCRIPTION LEGAL

RESIDENTIAL TRACT (BOTH PHASES)

All that tract or parcel of land lying in the City of Delanta and being a portion of Land Lot 44 of the 17th District of Fulton County Georgia and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at a right-of-way conjument located at the intersection of the southwesterly right-of-way of Wiengar Road (right-of-way is mitered at this point) and the northwesterly and thence run North 07 degrees 120 Methods are with varies and thence run North 07 degrees 120 Methods are with varies are with the contraction of the southwesterly and thence run North 07 degrees 120 Methods are with varies are with the contraction of the contraction of the southwesterly and thence run North 07 degrees 120 Methods are with the contraction of the southwesterly right-of-way width varies are with the contraction of the southwesterly right-of-way of without right-of-way of Peachtree Road (right-of-way width varies are with the contraction of the southwesterly right-of-way of without right-of-way of without right-of-way of Peachtree Road (right-of-way width varies are with the contraction of the southwesterly right-of-way of without right-of-way of without right-of-way of without right-of-way of Peachtree Road (right-of-way width varies are with the contraction of the southwesterly right-of-way of without right-of-way of Peachtree Road (right-of-way width varies are with the contraction of t and thence run North 07 degrees 19 minutes 44 seconds East along miter of the right-of-way of Wieuca Road with Peachtree Road for a distance of 109.92 feet to a point;

Thence along the southwesterly right-of-way of Wieuca Road (right-of-way width varies), run North 28 degrees 16 minutes 50 seconds West for a distance of 372.17 feet to a point;

Thence along the southwesterly right-of-way of Wieuca Road (right-of-way width varies), run North 28 degrees 16 minutes 50 West for a distance of 11.61 feet to a point;

Thence along the southwesterly right-of-way of Wieuca Road (right-of-way width varies), run North 00 degrees 31 minutes 49 seconds () Last for a distance of 22.83 feet to a point;

Thence along the southwesterly right-of-way of Wieuca Road (right-of-way width varies), run North 28 degrees 16 minutes 50 ascends West for a distance of 121.11 feet to a point on the southwesterly right-of-way of Phipps Boulevard;

Thence along the southwesterly right-of-way of Phipps Boulevard (right-of-way width varies), run along a curve to the left having a radius of 339.47 feet and an arc length of 214.01 feet, being subtended by a chord of North 46 degrees 20 minutes 26 seconds West for a distance

of 210.48 feet to a point, said point being the POINT OF BEGINNING;
Thence, from said POINT OF BEGINNING thus established and leaving thence, from said Folki of Brothering thus established and leaving said right-of-way, run South 34 degrees 37 minutes 07 seconds West for a distance of 326.48 feet to a point;

Thence run South 64 degrees 54 minutes 38 seconds West for a

distance of 101.68 feet to a point;

Thence run South 64 degrees 54 minutes 38 seconds West for a distance of 290.48 feet to \bar{a} point;

Thence run North 51 degrees 36 minutes 28 seconds West for a distance of 98.92 feet to a point;

Thence run North 51 degrees 36 minutes 28 seconds West for a distance of 86.14 feet to a point on the southerly right-of-way of Phipps Boulevard;

Thence, along the southerly right-of-way of Phipps Boulevard, run North 58 degrees 26 minutes 00 seconds West for a distance of 95.07 feet to a point;

Thence, along the southerly right-of-way of Phipps Boulevard, run along a curve to the right having a radius of 478.37 feet and an arc length of 71.55 feet, being subtended by a chord of North 42 degrees 07 minutes 10 seconds East for a distance of 71.48 feet to a point;

Thence, along the southerly right-of-way of Phipps Boulevard, run North 46 degrees 24 minutes 15 seconds East for a distance of 40.95 feet to a point;

Thence, along the southerly right-of-way of Phipps Boulevard, run along a curve to the right having a radius of 806.33 feet and an arc length of 248.18 feet, being subtended by a chord of North 55 degrees 13 minutes 19 seconds East for a distance of 247.20 feet to a point;

Thence along the southerly right-of-way of Phipps Boulevard (right-of-way width varies), run along a curve to the right having a radius of 806.33 feet and an arc length of 321.16 feet, being subtended by a chord of North 75 degrees 27 minutes 00 seconds East for a distance of 319.05 feet to a point;

Thence along the southerly right-of-way of Phipps Boulevard (right-of-way width varies), run North 86 degrees 51 minutes 38 seconds East for a distance of 11.98 feet to a point;

Thence along the southerly right-of-way of Phipps Boulevard (right-of-way width varies), run along a curve to the right having a radius of 339,47 feet and an arc length of 170.27 feet, being subtended by a chord of South 78 degrees 46 minutes 13 seconds East for a distance of 168.49 feet to the POINT OF BEGINNING.

Said tract or parcel of land contains 4.4454 acres.

Exhibit C to 1-0-588 page 2 of 8 Exhibit A Ragelofi

Z-96-70

To99-0-1581

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PINING



Municipal Clerk
Atlanta, Georgia

AN ORDINANCE BY: ZONING COMMITTEE

Z-96-70/Z-94-19

AN ORDINANCE AMENDING ORDINANCE Z-94-19, ADOPTED BY THE CITY COUNCIL AUGUST 1, 1994, AND APPROVED BY THE MAYOR AUGUST 1, 1994, REZONING FROM THE PD-MU (PLANNED DEVELOPMENT-MIXED USE), RG-2 (RESIDENTIAL GENERAL-SECTOR 2), AND R-3 (SINGLE FAMILY RESIDENTIAL) DISTRICTS TO THE PD-MU/SPI-12 (PLANNED DEVELOPMENT-MIXED USE/BUCKHEAD-LENOX SPECIAL PUBLIC INTEREST) DISTRICT, PROPERTY LOCATED AT THE REAR OF 3500 PEACHTREE ROAD, N.E., FOR THE PURPOSE OF APPROVING A REVISED SITE PLAN.

OWNER: EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED

STATES

APPLICANT: SAME

NPU-B

COUNCIL DISTRICT 7

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, as follows:

Peachtree Road, N.E. be amended, such that the Site Plan titled "Phipps Plaza, Renovation and Expansion, Monarch Centre, Atlanta, Georgia" prepared by Thompson, Ventulett, Stainback and Associates, dated May 3, 1994, last revised June 22, 1994 and marked received by the Bureau of Planning June 24, 1994 and the Site Plan titled "Streetscape Plan for Phipps Plaza Residential Component" prepared by Thompson, Ventulett, Stainback and Associates, dated July 6, 1994 and marked received by the Bureau of Planning July 7, 1994 be deleted and a new site plan be approved titled "Park Avenue Condominiums, Park Avenue Development Corp., Streetscape Plan" prepared by Burt Hill Kosar Rittelmann Associates, dated November 15, 1996 marked received by the Bureau of Planning on November 19, 1996, to wit:

ALL THAT TRACT or parcel of land lying and being in Land Lots 44 and 45 of the 17th District, Fulton County, Georgia, being more particularly described by the attached legal description.

SECTION 2. This amendment is conditioned on a site plan and written conditions. The Director, Bureau of Buildings, shall issue a building permit for the development of the above described property only in compliance with the attached conditions. Any conditions hereby approved (including the conditional site plan) do not authorize the violation of any zoning district

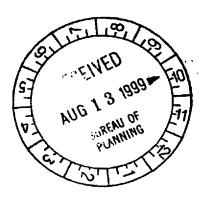
Exhibit C to 11-0-0588 Pag 3 of 8

Exhibit B TO 99-0-1581

regulations. District regulation variances can be approved only by application to the Board of Zoning Adjustment.

SECTION 3. That the maps referred to, now on file in the Office of Municipal Clerk, be changed to conform with the terms of this ordinance.

SECTION 4. That all ordinances or parts of ordinances in conflict with the terms of this ordinance are hereby repealed.



Clina Wood

ADOPTED as amended APPROVED by the Mayor

August 04, 1997 August 05, 1997

Exhibit C =15 01-0-0588 page 4 of 8

Exhibit B/99-0-1581
page 208-6

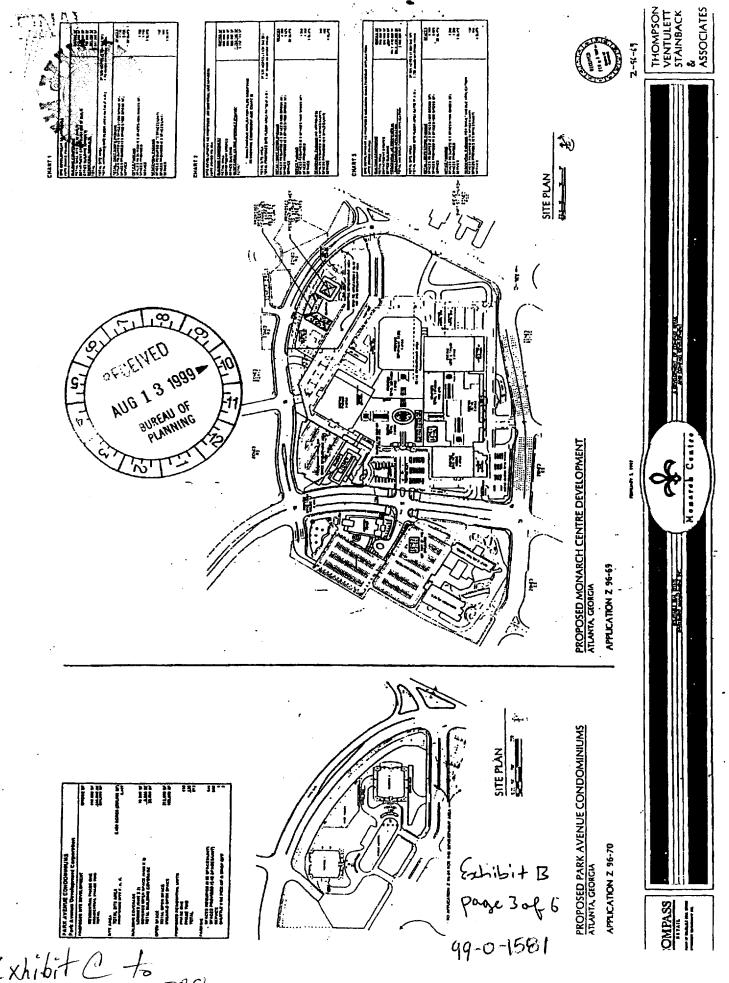


Exhibit C to 01-0-0588 Page 5 of 8

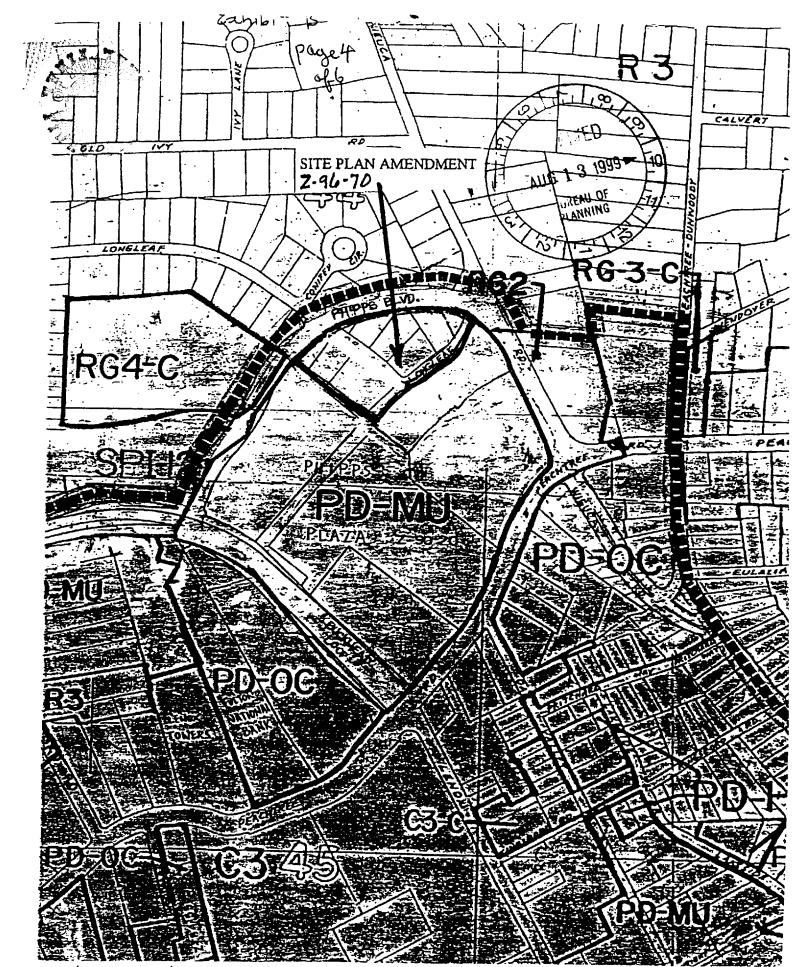
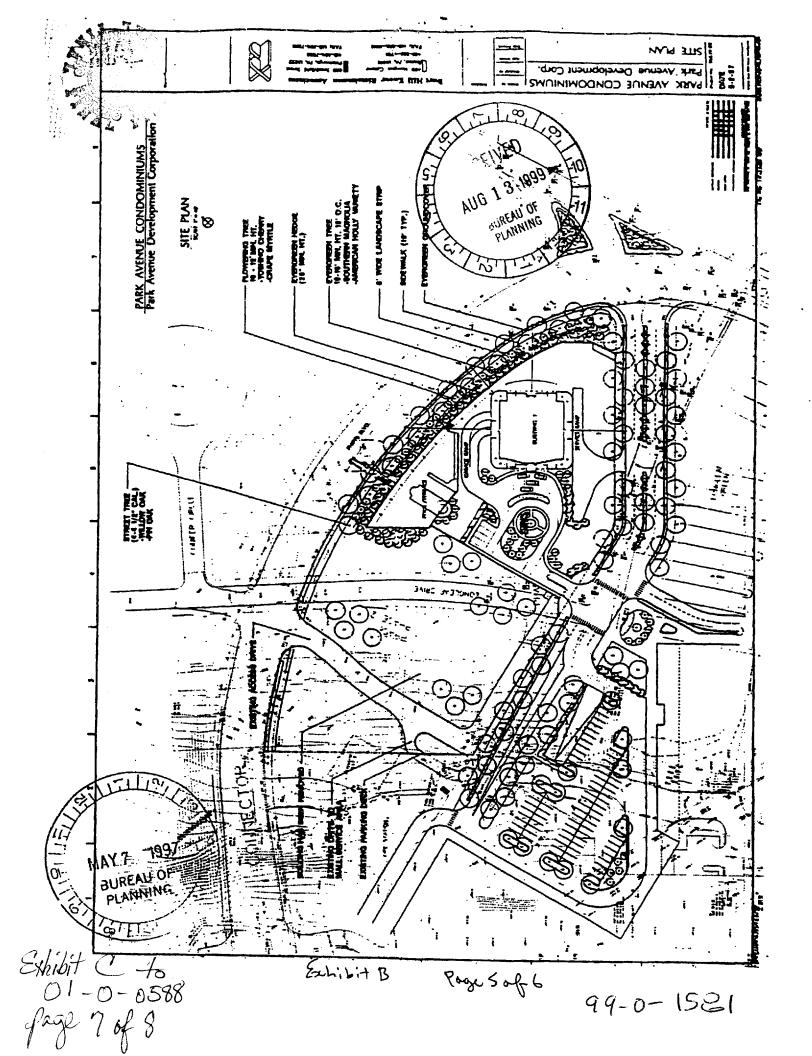
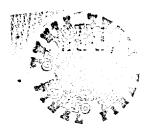


Exhibit C to 01-0-0588

Page 6 of 8

99-0-1531





ZONING CONDITIONS

FOR

Z-96-70 3500 PEACHTREE ROAD, N.E. (Equitable Residential Development) NOT SUBJECT TO GENERAL CONDITIONS

- A site plan, dated May 2,1997 marked received by Bureau of Planning May 7, 1997, to be approved by the Bureau of Planning, which depicts a maximum of 420,000 square feet of development with a maximum of 130 residential units.
- A typical streetscape section along Phipps Boulevard, to be approved by the Bureau of Planning, depicting landscape strips, sidewalk areas, types of trees and ground cover and dimensions of same.
- 3. A final landscape plan, including a phasing plan, shall be approved by the Bureau of Planning. The Bureau of Buildings shall not issue temporary or permanent Certificates of Occupancy unless and until it has inspected the property and verified that the entire landscape plan has been fully implemented in accordance with the applicant's phasing plan.
- 4. All proposed pedestrian improvements, as depicted on the approved site plan, shall be fully implemented prior to temporary or permanent Certificates of Occupancy being issued, in accordance with the phasing plan to be approved by the Bureau of Planning.
- 5. The Department of Public Works shall not issue any clearing and grading permits for this project until such time as the Bureau of Buildings has issued a building permit which includes a stormwater drainage plan, approved by the Department of Public Works and the Commissioner of Planning, Development and Neighborhood Conservation. Said plan shall include a method of capturing and retaining stormwater so that it is released at 80 percent of the pre-development rate.
- 6. The Bureau of Buildings shall not issue a building permit until such time as the Department of Public Works and the Commissioner of Planning, Development and Neighborhood Conservation have certified that the sanitary sewer capacity is sufficient to carry the projected additional flow from this development.

Ezhibit B page bof b STEPLED TO FOR THE PLANNING PLANNING PLANNING

Exhibit C to \$1-0-\$588 Page 8 of 8

99-0-1581

Atlanta City Council

Regular Session

01-0-0588 Z-01-25; Amend Z-96-70 approve Revised Site Plan for Rear of 3500 P'tree Rd, NE

ADOPT AS AMEND

YEAS: 10 NAYS: 4

ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0

ABSENT 1

Y McCarty Y Dorsey Y Moore N Thomas Y Starnes N Woolard Y Martin N Emmons Y Bond B Morris Y Maddox Y Alexander Y Winslow N Muller Y Boazman NV Pitts

FINAL COUNCIL ACTION		CERTIFIED CERTIFIED CERTIFIED ALL 1 6 2001 ALUL 1 6 2001								MAYOH'S ACTION	APPROVED JUL 2 5 2001 WITHOUT SIGNATURE BY OPERATION OF LAW							
	John S	Committee	Date	Chair	Action: Fav, Adv, Hold (see rev. side) Other:	Members		Refer To	Committee	Date	Chair	Action: Fav Adv Hold (see rev side)	Other:	Members			Refer To	
First Reading	Committee Date Chair Lem III Groen Referred to	Committee	6-29-0/	Chair	Action: Fav, Adv Hold (see rev. side) Other:	Members		Refer To	Committee Committee	Date 7-10-0/	Chair	Action: Adv. Hold (see rev. side)		Members (Clay miles	J	Refer To	
	01- () -0588 (Do Not Write Above This Line)	AN ORDINANCE Z-01-25	BY ZONING COMMITTEE	AN ORDINANCE TO AMEND	INANCE Z-96-70, ADOPTE COUNCIL ON AUGUST 4, ROVED BY THE MA)	AUGUSI 5, 1997 AFFROVING A KEVISED SITEPLAN FOR PROPERTY LOCATED AT THE REAR OF 3500 PEACHTREE ROAD,	N.E. FOR THE PURPOSE OF APPROVING A REVISED SITE PLAN	ADOPTED BY JUL 16 2001	COUNCIL	2	CONSENT REFER G- REGULAR REPORT REFER CONSENTER REPORT REFER		Date Referred $5/7/6/$	Referred To: ZRB & Zoning	Date Referred	Referred To:	Date Referred	Referred To: